



Comptroller General  
of the United States

Washington, D.C. 20548

Britner

146435

## Decision

**Matter of:** Fraudulent Travel Vouchers

**File:** B-245282

**Date:** April 8, 1992

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### DIGEST

In a case involving a claim against the federal government for payment, the burden is on the claimant to provide evidence of his entitlement to be paid. Since the claimant has made material statements of fact in support of his claim for subsistence expenses that conflict with evidence provided by other witnesses, the claim is too doubtful to be approved for payment. However, transportation expenses the agency paid, which were not shown to be doubtful, should not be recouped.

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### DECISION

The National Transportation Safety Board (NTSB), requests our review of its determination that an NTSB administrative law judge submitted a fraudulent travel voucher following an official trip to Germany in October 1990.<sup>1</sup> For the following reasons, we sustain the agency's actions in part and reverse in part.

### BACKGROUND

There is no dispute that the claimant traveled to Germany on official business to conduct a hearing in Frankfurt arising from a license holder's appeal of an Emergency Order of Revocation issued by the Federal Aviation Administration. His wife, who was not traveling on government business, accompanied him on this trip.

The hearing had been set to begin October 3, 1990. In fact, the case settled on the first day. However, the claimant and his wife remained in Germany, traveling to Munich and

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<sup>1</sup>The NTSB General Counsel requested our review of the determinations of NTSB's certifying officer on the claimant's claims. The claimant is represented by counsel, Neil and Shaw, Attorneys at Law, who submitted briefs and documents on his behalf, and asked that the agency submit his appeal of the agency's determination to us.

then returning to the United States via Frankfurt on October 7.

The claimant subsequently filed a travel voucher with the agency claiming subsistence allowances for the period of September 30, when he began travel to Germany, through October 7, 1990, when he returned to the United States. That voucher indicated that the claimant left the United States from Dulles Airport on September 30, arrived in Frankfurt October 1, left Frankfurt on October 7 and arrived home that day. For each day of the period of October 2 through 6 (Tuesday through Saturday) the voucher shows in the description block only the statement "TDY: Hearing." The voucher was signed by the claimant as both the traveler and the approving official.<sup>2</sup> The NTSB Comptroller withheld payment and questioned why the claimant did not return until October 7, when the hearing was settled on October 3. This gave rise to the agency ultimately refusing payment on the grounds that the voucher contained fraudulent statements as discussed below. Based on the following circumstances, the agency has denied the claimant's claims for subsistence, sought to recoup the cost of his airfare and charged him with one day of annual leave. All the dates mentioned below are in 1990.

#### 1. Request for actual expenses

The agency alleges that the claimant requested approval of actual expenses subsistence in lieu of per diem on the basis that the Octoberfest celebration had taken up all the hotel rooms within the per diem rate when, in fact, he knew that a room within the per diem rate was available.<sup>3</sup> According to

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<sup>2</sup>The claimant subsequently stated that the handwritten voucher he gave to Philisteen Styles, an NSTB ALJ Administrative Support Specialist, to type showed in the description block "Germany," and she changed that in the typed version to "TDY: Hearing." Ms. Styles submitted a statement confirming that she did so on her own initiative because she thought her description more "accurate and appropriate."

<sup>3</sup>Generally, federal employees are expected to obtain lodgings within a maximum per diem rate set, in the case of foreign travel, by the State Department. Federal Travel Regulations, 41 C.F.R. § 301-7.2(c) (1990). That rate is intended to include lodging, meals and incidental costs. 41 C.F.R. § 301-7.1(c). However, when that rate is inadequate because of some exceptional circumstance, employees may request, and must justify, reimbursement for their actual expenses. 41 C.F.R. § 301-8.4. Reimbursement for actual expenses is limited to the greater of 150 percent

the agency, the claimant requested a four- or five-star hotel for his stay. This allegation is supported by sworn statements from Ms. June Grayson, a hearing assistant and the NTSB employee who worked with Sato (a contract travel agency) to arrange for the claimant's travel, and two Sato employees, Ms. Marrita Winbush, a travel consultant, and Ms. Linda Fishbaugh, then a Sato supervisor. All three affidavits are supported in part by contemporaneously prepared hand-written notes.

The information the agency submitted shows that Sato reserved two rooms for the claimant in Heidelberg, Germany, one at the Hotel Bayrischer Hof, a standard hotel, costing approximately \$68 each night, and another at the Hotel Zum Ritter, a four-star hotel costing \$152 each night.<sup>4</sup> The maximum per diem rate was \$126. According to Ms. Grayson's affidavit, on or about September 10, she advised the claimant that the two hotels were available and of their respective costs. Ms. Grayson also stated that the claimant directed her to confirm the room at the Hotel Zum Ritter and to have Ms. Stiles prepare a request for actual subsistence expenses stating that rooms within the per diem rate were unavailable because of the Oktoberfest celebration. Ms. Stiles submitted the request on September 14, and it was approved by the NTSB Assistant Comptroller on September 17.

The claimant states that he was on military reserve duty in San Antonio, Texas, from September 4 through September 18, when most of the arrangements for his trip were made, although he acknowledges that he stayed in touch with his staff by telephone. He insists that no one offered him a choice of hotels and that he did not know until after his return from Germany that the Hotel Bayrischer Hof had been available. Furthermore, he states he did not speak with any Sato employee about his trip to Germany during his military duty in Texas. The agency, however, states that telephone billing records show that three calls were made from San Antonio, Texas, on September 17 to a Sato telephone number in Falls Church, Virginia, and charged to the claimant's NTSB calling card account.

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of the maximum per diem rate or \$50 plus the applicable maximum per diem rate. 41 C.F.R. § 301-8.3(b).

<sup>4</sup>Lodging rates are given in dollars and are approximate. The agency indicates that at the time of the claimant's travel, the exchange rate of Duetschmarks to dollars was 1.5 to 1. Hotels were procured in Heidelberg because of a shortage of rooms in Frankfurt, and the claimant was authorized a rental car for travel between Frankfurt and Heidelberg.

## 2. Extension of claimant's stay

The agency also alleges that the claimant extended his stay in Germany for personal reasons, but claimed to be on official travel. As noted above, the hearing for which the claimant traveled to Germany was scheduled to begin October 3. On August 29, Ms. Grayson had Sato book the claimant on a September 30 flight to Germany with a return date of October 5. On September 19, the day after his return from Texas, the claimant arranged through Sato to have his wife travel with him to Germany on September 30, and return October 7. According to Sato, the claimant's wife's ticket was a non-refundable ticket requiring a seven-day stay. The claimant then had Sato change the return date on his ticket to October 7. According to Sato, they were able to reserve a ticket for him with no restrictions and at the same government rate applied to his initial ticket.

The claimant states that he and one of the two court reporters who accompanied him on the trip went to the Frankfurt airport on October 4 to see if an earlier return flight was available. According to the claimant, he was told by a Pan Am agent that no flights were available and, further, that his ticket could not be exchanged for another ticket at the government rate. The claimant alleges that he then called Sato's emergency number and again was told that his ticket could not be changed.

The record includes two affidavits from the court reporter. The first, dated Dec. 30, 1990 alleges that she witnessed a Pan Am agent tell the claimant that the claimant's ticket was non-refundable and that no seats were available on any earlier return flights. The second, dated Nov. 15, 1991, alleges that she saw the claimant make a telephone call from the airport, but does not allege to whom the call was made.

The claimant claimed subsistence expenses for each of the remaining days of his trip on the grounds that no flight was available at the government rate before his scheduled October 7 return date. The agency disputes this largely on the basis of information provided by Sato. First, according to a December 27 letter from Sato's GSA customer manager, government rate seats were available on Pan Am flight 61 on October 4. Further, Sato's emergency number, which is an 800-number, is not accessible from overseas. Finally, according to the December 27 letter, Sato's telephone records indicate no calls were received from Germany between September 27 and October 4, and Sato's client contact records show no contacts with the claimant at that time.

In addition the agency states that as early as September 21 the claimant asked Sato to reserve a hotel room for him in Munich for October 5 and 6. Sato confirmed a room there and

this was communicated to the claimant's office in Frankfurt on October 2. This is supported by statements in the affidavits of Ms. Grayson and Ms. Winbush, referred to above, and of Maudine Clayborn, a Paralegal Specialist with NTSB.

### 3. Rates claimed by claimant

The claimant claimed \$152 for lodging for each of the 7 nights he stayed in Germany. However, the agency notes that the claimant and his wife stayed at the Hotel Krone on October 4 (\$66 per night) and at the Hotel Concord the nights of October 5 and 6 (\$153 per night). Both hotels are in Munich. On his voucher, the claimant claimed the full \$152 for October 4. He states he did so inadvertently.

### ANALYSIS

Through his counsel, the claimant argues that the agency has failed to prove fraud by clear and convincing evidence and, therefore, is obligated to pay claimant's claims. However, that argument misstates the burden of proof in cases such as this one.

In cases where an entitlement to payment from the United States is asserted, the burden of proof is on the claimant to establish the liability of the United States and his or her right to payment. 4 C.F.R. § 31.7 (1991). Furthermore, a certifying or disbursing officer has an affirmative duty to withhold payment on any doubtful claims, including those for which there is a reasonable suspicion of fraud, leaving the claimant the option of suing in the Claims Court where the burden of proof is on the United States to prove fraud with clear and convincing evidence. 44 Comp. Gen. 110 (1964); 57 Comp. Gen. 664 (1978). See also McCarthy v. United States, 670 F.2d 996 (1982); O'Brien Gear & Machinery Co. v. United States, 591 F.2d 666 (1979). The rationale for the lower standard of proof at the level of the certifying or disbursing officers is that matters such as fraud are better left to the scrutiny of the courts, where facts may be judicially determined upon sworn testimony and competent evidence and a forfeiture declared or other appropriate action taken. 44 Comp. Gen. at 115.

When suspicion of fraud taints one item on a claim, the entire claim is tainted. 44 Comp. Gen. at 115, 116.<sup>5</sup> See also, 28 U.S.C. § 2514 (1988). A "claim" is any item that

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<sup>5</sup>See also 70 Comp. Gen. 464 (1991), in which we distinguish and modify the rules to be applied to recoupment of paid claims from the rules applied to the denial of pending claims.

an employee could claim independently of the employee's other entitlements, 57 Comp. Gen. at 667. Thus, each day's subsistence allowance is considered a separate claim and a fraudulent claim for such allowance would not necessitate the denial of the other separate items on a voucher that are not fraudulently based. Id. at 667.

Generally, when an agency investigation clearly reveals that an employee included fraudulent statements in a travel voucher in order to obtain funds from the government, the agency has met its burden of proving that claims for subsistence on those days are tainted by fraud, 68 Comp. Gen. 108 (1988), citing Mark J. Worst, B-223026, Nov. 3, 1987. In this case, the agency's Comptroller obtained sworn statements from the principals involved and had Sato provide his office with copies of their relevant records. Through counsel, the claimant has had the opportunity to respond to all the allegations and has submitted his own statements.

Upon our review of the entire record, we believe there is substantial evidence to support the agency's findings. Specifically, we agree that there is sufficient evidence in the record to conclude that the claimant knew that lodgings within the per diem rate were available when he directed his staff to prepare a request for actual expenses, that the claimant claimed per diem for October 5, 6 and 7, when he was not on official business, and that the claimant knowingly claimed \$152 for each night he stayed in Germany when, in fact, he knew he was not entitled to that amount.

The claimant alleges that it was Ms. Grayson who told him that no rooms within the per diem rate were available. However, his statements are unsupported by any corroborating evidence, and, in fact, are contradicted by the evidence in the record. The affidavits of Ms. Grayson, Ms. Winbush and Ms. Fishbaugh are supported by their own contemporaneously prepared hand-written notes and are consistent with Sato's phone records and claimant's agency-issued telephone credit card bills. Although the claimant alleges that he did not discuss his trip with the personnel at Sato, the bill for the claimant's telephone charge card shows three calls made to Sato on September 17, the day the Comptroller approved his request for actual expenses and the same day that Ms. Winbush canceled the reservation for the Hotel Bayrischer Hof and confirmed the reservation for the Hotel Zum Ritter.

Regarding the claimant's contention that he was required to stay in Germany until October 7 because of the restrictions on his plane ticket, Sato denies that there were any restrictions and, in fact, confirmed that a flight with seats at government rates was available on October 4. Although the claimant insists that he was acting on advice

given by a Sato employee, he provided no documentary evidence that contradicts Sato's statement that their offices received no calls from Germany during the relevant time period. If he called a number other than the 800-number, which was not accessible from Germany, this should have been reflected on his credit card bill, and he has not provided a bill showing such a charge.

As noted above, the court reporter who accompanied the claimant to the airport stated only that she saw him make a telephone call; she did not state to whom the call was placed or the nature of the conversation. Furthermore, although her Dec. 30, 1990 affidavit corroborates the claimant's allegation that a Pan Am agent told him he could not exchange his ticket, we believe the documentary evidence submitted by Sato is more probative than her statement. There is no evidence that the ticket actually presented to the Pan Am agent was, in fact, the claimant's ticket, rather than his spouse's ticket, which was a non-refundable ticket requiring a 7-day stay.

More importantly, we note that it was the claimant himself who arranged to have his return flight changed from October 5 to October 7 to coincide with the return time for his wife. At the time that change was made, September 19, there was no official reason to extend his stay, that is, any reason related to the hearing scheduled for October 3. Accordingly, we agree with the agency that this indicates the claimant planned before his departure to extend his stay in Germany for personal reasons.

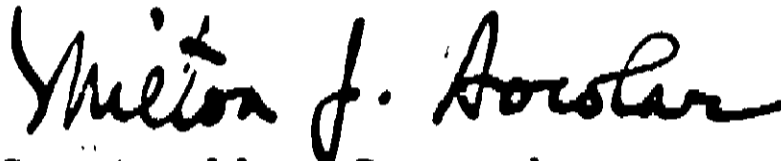
Finally, we think the record supports the agency's position that the claimant knew he was not entitled to the full \$152 lodging cost that had been authorized for his trip. The \$152 charged by the Hotel Zum Ritter reflected a rate higher than a prudent traveler would have incurred knowing there were lower rate accommodations available in another hotel in the area. Furthermore, although the claimant alleges that he inadvertently requested reimbursement for the wrong rate on the night of October 4, we note that the amount claimed is more than twice the amount he actually paid. As to the claims for October 5, 6 and 7, the weight of the evidence supports the agency's position that claimant chose not to return on an available flight on October 4, and, therefore, any subsistence expenses he incurred after that date were personal, and not incurred while on official business.

Based on the preceding analysis, we believe there is sufficient evidence in the record to support the agency's finding that each day for which the claimant claimed subsistence is tainted by a reasonable suspicion of fraud. Therefore, the agency properly has denied payment of all subsistence allowances for those days.

As to the agency's determination to recoup from the claimant the airfare it paid on his behalf for this trip, there is no allegation of fraud related to that cost nor to the necessity for claimant to travel to and from Germany. Therefore, since that cost is not part of the tainted subsistence claims, on the record before us, we do not find sufficient basis to support recoupment of the airfare.

The claimant also claims that the agency erroneously charged him annual leave. However, since the facts support the agency's determination that he was not on official business October 5, which was a Friday, the agency properly charged him with annual leave for that day. See Steven M. Rudolph, B-219211, Dec. 9, 1985.

Accordingly, the agency's determination to withhold all payment for the claimant's subsistence claims is affirmed, as is the charge of one day of annual leave. However, the determination to recoup the airfare the agency paid is reversed.



Acting Comptroller General  
of the United States